

**SANDIA CORPORATION
SF 6432CI (0305)
SECTION II**

STANDARD TERMS AND CONDITIONS FOR COMMERCIAL ITEMS

THE FOLLOWING CLAUSES APPLY TO THIS CONTRACT AS INDICATED UNLESS SPECIFICALLY DELETED, OR EXCEPT TO THE EXTENT THEY ARE SPECIFICALLY SUPPLEMENTED OR AMENDED IN WRITING IN THE COVER PAGE OR SECTION I.

CI01 ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs) Contractor, by signing this contract and/or delivering item or services ordered under this contract, agrees to comply with all the Ts&Cs and all specifications and other documents that this contract incorporated by reference or attachment. Sandia hereby objects to any Ts&Cs contained in any acknowledgment of this contract that are different from or in addition to those mentioned in this document. Failure of Sandia or Contractor to enforce any of the provisions of this contract shall not be construed as evidence to interpret the requirements of this contract, nor a waiver of any requirement, nor of the right of Sandia or Contractor to enforce each and every provision. All rights and obligations shall survive final performance of this contract.

CI02 APPLICABLE LAW The rights and obligations of the parties hereto shall be governed by this contract and construed in accordance with the law of the state of delivery, except for Federal Acquisition Regulation (FAR) and FAR supplement clauses which shall be in accordance with federal law. The parties agree to jurisdiction in the Federal District Court, with venue in the district closest to the delivery point of the items or services giving rise to the claim. In the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in the State Court closest to the delivery point of the item or services giving rise to the claim.

CI03 ASSIGNMENT Contractor shall not assign rights or obligations to third parties without the prior written consent of Sandia. However, Contractor may assign rights to be paid amounts due or to become due if Sandia is promptly furnished an executed Assignment of Payments form. Administration of this contract may be transferred from Sandia to U. S. Department of Energy/National Nuclear Security Administration (DOE/NNSA) or its designee, and in case of such transfer and notice thereof to the Contractor, Sandia shall have no further responsibilities hereunder.

CI04 BANKRUPTCY If the Contractor enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the SCR responsible for this contract within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the contract numbers for which final payment has not been made.

CI05 CANCELLATION OR TERMINATION FOR CONVENIENCE (a) Sandia may cancel this contract, in whole or in part, if the Contractor fails to comply with any of the terms of this contract, or fails to provide adequate assurance of future performance. In that event, Sandia shall not be liable for any amount for item or services not yet accepted by Sandia. (b) Sandia may terminate for the convenience of Sandia or the government this contract, in whole or in part, for any item or services not yet accepted by Sandia. In that event Sandia shall be liable for the purchase price of item or services already completed or identified to this contract but not yet accepted by Sandia. (c) Contractor shall not be liable for delays in performance occasioned by causes beyond Contractor's reasonable control and without Contractor's fault or negligence. (d) The rights and remedies of Sandia in this clause are subject to the Disputes clause of this contract.

CI06 CHANGES The Sandia Contracting Representative (SCR) may at any time, by written notice, make changes within the general scope of this contract in any one or more of the following: (1) description of the services to be performed; (2) place of performance; and (3) the amount of services to be furnished. If any such change causes a difference in the cost of, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions if and only if the order has not left Contractor's point of origin for transportation to Sandia. Such adjustment shall be made by written revision to this contract signed by both parties. Any claim for adjustment by Contractor must be made within twenty (20) days from the date of receipt of Sandia's change notice, although Sandia in its sole discretion may receive and act upon any claim for adjustment at any time before final payment. Nothing in this clause, including any disagreement with Sandia about the equitable adjustment, shall excuse Contractor from proceeding with the contract as changed.

CI07 COMPLIANCE WITH LAWS Contractor shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations and such compliance shall be a material requirement of this contract.

CI08 DEFINITIONS The following terms shall have the meanings set forth below for all purposes of this contract.

(a) CONTRACT means Contract, Purchase Order, Contract, Price Agreement, Subcontract, Ordering Agreement, or modifications thereof.

(b) CONTRACTOR means the person or organization that has entered into this contract to sell something to Sandia.

(c) GOVERNMENT means the United States of America and includes the U.S. Department of Energy/National Nuclear Security Administration (DOE/NNSA) or any duly authorized representative thereof.

(d) ITEM means commercial items, commercial services and commercial components as defined in FAR 52.2021.

(e) SANDIA means Sandia National Laboratories, operated by Sandia Corporation under Contract No. DEACO494AL85000 with the U.S. Department of Energy/National Nuclear Security Administration (DOE/NNSA).

(f) SCR means Sandia Contracting Representative, the only person authorized to execute and/or administer this contract for Sandia.

(g) SELLER means the person or organization that has entered into this contract to sell something to Sandia

(h) SDR means Sandia Delegated Representative. The SCR may delegate personnel as authorized representatives for such purposes as and to the extent specified in the delegation. Such delegation shall be in writing to the Contractor, and shall designate by name the personnel so delegated as authorized representatives. The SDR shall exercise no supervision over the Contractor's employees. THE SDR's AUTHORITY IS LIMITED SOLELY TO THE AUTHORITY ENUMERATED IN SUCH WRITTEN DELEGATION. THE SDR HAS NO AUTHORITY TO CHANGE ANY TERM OR CONDITION CONTAINED IN THIS CONTRACT.

(i) SUBCONTRACT means any lower tier contract under this contract.

CI09 DISPUTES Contractor and Sandia agree to use the Sandia Acquisition Conflict Resolution Process set forth at: http://www.sandia.gov/bus-ops/scm/forms/policy/sand2007_7107_P_AcquisitionConflict-res.pdf for resolving any and all disputes arising from this contract.

CI10 EXCESS FREIGHT CHARGES When Sandia pays any amounts for freight charges in connection with this contract, Contractor is responsible for and shall pay to Sandia the amount of any excess freight charges if the routing specified in writing by the SCR is not used. If the specified routing cannot be used, Contractor shall promptly notify the SCR before shipment, and obtain new routing directions from the SCR.

CI11 EXTRAS AND VARIATION IN QUANTITY Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the SCR. No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract

CI12 ORDER OF PRECEDENCE Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Section I; (2) SF 6432CI, Section II.

CI13 PAYMENT Unless otherwise provided, terms of payment shall be Net 30 days from the latter of: (1) receipt of Contractor's proper invoice, if required, or (2) delivery of item/completion of work. Any offered discount shall be taken if payment is made within the discount period that the Contractor indicates. Payments may be made either by check or electronic funds transfer, at the option of Sandia. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

CI14 PERFORMANCE EVALUATION PROGRAM In keeping with Sandia's goals of continuous improvement, and promoting and creating an environment for superior

Contractor performance, Sandia has established a collaborative feedback process through the Performance Evaluation Program. This program is intended to create an environment, which fosters dialog, provides feedback, and improves communication. Any contract awarded by Sandia is a candidate for evaluation under this program. Details on the evaluation program can be viewed at

<http://www.sandia.gov/supplier/contracts/prequal/performeval.htm>

CI15 RECYCLED AND/OR NEW MATERIALS Unless otherwise specified in this contract, all item delivered shall consist of recycled and/or new materials. New is defined as previously unused which may include residual inventory or unused former government surplus property. Contractor shall give preference to the use of recycled materials as set forth in DEAR 970.5223.2 Affirmative Procurement Program.

CI16 RIGHTS AND INTERESTS All rights and interests resulting from this contract shall pass directly from the Contractor to the government. FAR 52.22717 applies to all deliverables which are copyrightable works produced as part of the performance of this contract.

CI17 RISK OF LOSS If Sandia is responsible for the risk of loss during transportation of compliant item, Sandia shall compensate Contractor the lesser of: (1) the agreed price of such item, or (2) the Contractor's cost of replacing such item; and such loss shall entitle the Contractor to an equitable adjustment in delivery schedule obligations.

CI18 SUBCONTRACTS If Contractor subcontracts any work in the performance of this contract, Contractor shall incorporate into every such contract an appropriate set of Sandia Ts&Cs found at: <http://www.sandia.gov/bus-ops/scm/Contractor/Contractor-info.html> (click on the Terms and Conditions tab) This link may be used for the purchase of commercial items.

CI19 TAXES By reason of Sandia's Nontaxable Transaction Certificate, the Contractor should not incur nor include in the price any state and local taxes except those which were paid by the Contractor to third parties in acquiring the item which are the subject matter of this contract. The price does include all applicable federal taxes.

CI20 TRANSPORTATION All transportation shall be "FOB Origin" unless otherwise specified in this contract. If transportation is specified "FOB Origin," (a) no insurance cost shall be allowed unless authorized in writing, and (b) the bill of lading shall indicate that transportation is for DOE/NNSA and the actual total transportation charges paid to the carrier(s) shall be reimbursed by the government pursuant to contract No. DEACO4-94AL85000. Confirmation will be made by Sandia National Laboratories.

CI21 WARRANTY Contractor expressly warrants that no counterfeit item or components in item shall be delivered to Sandia on this contract. Contractor expressly warrants that all item provided under this contract shall have a rightful transfer of good title thereto and are delivered free of any rightful claims of any third person by way of

infringement of any intellectual property right. The warranty shall begin upon receipt of conforming item and extend for a period of: (1) the manufacturer's warranty period or six (6) months, whichever is longer, if the Contractor is not the manufacturer and has not modified the item, or (2) one (1) year or the manufacturer's warranty period, whichever is longer, if the Contractor is the manufacturer of the item or had modified it. If any nonconformity with item appears within that time, Contractor shall promptly repair, replace, or reperform such item at Contractor's election. Transportation of replacement item and return of nonconforming item and repeat performance of services shall be at Contractor's expense. Sandia shall notify Contractor of such nonconformity within a reasonable time after discovery, and Contractor shall notify Sandia of whether it chooses to make repairs or replacements within three (3) working days after Sandia's notice of nonconformity. If repair or replacement or reperformance of services is not timely, Sandia may elect to return the nonconforming item or repair or replace them or reprocur the services at Contractor's expense. Contractor disclaims the implied warranties of merchantability or fitness for a particular purpose.

CI22 ADDITIONAL TERMS AND CONDITIONS This contract incorporates by reference with the same force and effect as if they were given in full text, the following cited Federal Acquisition Regulation (FAR) clauses and Department of Energy Acquisition Regulation (DEAR) clauses. The full text of these clauses may be found at Title 48 of the Code of Federal Regulations (CFR). Where the FAR/DEAR clauses refer to government and Contracting Officer, substitute Sandia and Sandia Contracting Representative (SCR). Upon request the SCR will make the full text available.

CI23 APPLY TO CONTRACTS AT ANY VALUE

FAR 52.22311 Ozone Depleting Substances FAR 52.22312 Refrigeration Equipment and Air Conditioners FAR 52.24215 Stop Work Order FAR 52.2446 Subcontracts for Commercial Item and Commercial Components

CI24 APPLY TO ALL CONTRACTS EXCEEDING \$10,000

FAR 52.22235 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (38 U.S.C. 2012(a)) FAR 52.22226 Equal Opportunity (E.O. 11246) FAR 52.22236 Affirmative Action for Workers with Disabilities (29 U.S.C. 793) FAR 52.22237 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans FAR 52.2462 Inspection of Supplies Fixed Price

CI25 APPLY TO ALL CONTRACTS EXCEEDING \$500,000

FAR 52.2199 Small Business Subcontracting Plan FAR 52.21916 Liquidated Damages Subcontracting Plan

CI26 – APPLY TO ALL CONTRACTS THAT MAY INVOLVE ACCESS TO CLASSIFIED INFORMATION

DEAR 952.2042 Security Requirements DEAR
952.20470 Classification/Declassification DEAR
970.52041 Counterintelligence

CI27 APPLY TO ALL CONTRACTS WHERE ANY WORK WILL BE PERFORMED ON A GOVERNMENT SITE

DEAR 970.52231 Integration of Environment, Safety, and Health into Work planning and Execution DEAR 970.520426 Nuclear Facility Safety DEAR 970.52234 Workplace Substance Abuse Programs at DOE sites DEAR 952.20370 Whistleblower Protection for Contractor Employees

CLAUSES CI28 THROUGH CI34 APPLY TO ALL CONTRACTS WHERE ANY WORK WILL PERFORMED ON A GOVERNMENT SITE

CI28 CITIZENSHIP STATUS All personnel of the Contractor and its subcontractors who require access must be United States citizens, or foreign nationals who are legal aliens or have the required authorization to perform work in the United States and must meet rules of the site for access to the work areas in place at the time of performance of this contract.

CI29 CONTRACTOR OR SUBCONTRACTOR USE OF GOVERNMENT OWNED VEHICLES The following provisions apply if work under this contract requires Contractor or subcontractor personnel to operate government owned vehicles either on or off government sites. Contractor shall maintain, at Contractor's expense, during the period of performance of work under this contract, third party vehicle liability insurance which shall cover the use of such government owned vehicles with limits of at least \$200,000/\$500,000 public liability and \$20,000 property damage. Medical payments coverage, comprehensive and collision insurance, uninsured motorist, and personal injury protection will not be required under this clause unless required by State statute. All Contractor's agents, employees and subcontractors of any tier shall obey all rules and regulations pertaining to the use of government owned vehicles. In the event of a motor vehicle accident, the Contractor shall submit a completed Motor Vehicle Accident Reporting Form SF 91 to the SCR together with any additional supplemental forms required by instructions given on the General Service Agreement (GSA) Form Packet 1627. A GSA Form Packet 1627 normally is located either in the headliner or glove box of the GSA vehicle. Contractor's personnel shall assure that a GSA Form Packet 1627 is available in a GSA vehicle prior to accepting and driving a GSA vehicle.

CI30 – ENVIRONMENTAL, SAFETY, AND HEALTH (ES&H) REQUIREMENTS (a)

Service Providers. Sandia directed work, Sandia shall provide those workers with any and all necessary safety authorization documents, personal protective equipment, industrial hygiene monitoring, medical surveillance, and radiation protection services. For Contractor employees performing Contractor directed work, Contractor shall provide its workers with all ES&H services, with the exception of Contractor employees

performing Contractor directed work on government sites for whom Sandia shall provide radiation dosimetry services and survey of record, as appropriate. **(b) Training Requirements.** Any Contractor personnel who will enter a government site to perform work shall have completed all of the ES&H training required by the Statement of Work (SOW) prior to any attempts to enter a government site as shown by written records of such training furnished to the SDR or to the Requester if no SDR is named in Section I of this contract. Contractor shall certify to Sandia completion of all required training on the Completion Record for Contractor Administered Training form. This form is located on the Web at <http://www.sandia.gov/supplier/forms> or obtained from the SDR. Contractor shall provide the completion record form for the initial ESH100 training to the SDR on the first day of work. Contractor shall provide the completion records for any other training required above to the SDR before starting the affected work activity. Any person not having completed all ES&H training requirements may be denied access to any government site and Contractor may be terminated for default of this contract as well as every other contract the Contractor has with Sandia.

CI31 HAZARDOUS MATERIALS (a) Handling Requirements. For contracts that require the performance of work on government sites, the Contractor shall coordinate with the SDR all activities associated with the acquisition (including reporting hazardous materials used on government sites), handling, storage, accidental spills, and/or disposal of hazardous materials and/or waste. The Contractor shall notify the SDR of all hazardous and/or radioactive waste generated during performance of work. Such materials become Sandia owned waste and the Contractor shall notify the SDR for proper disposal by Sandia. Contractor's assistance in disposal may be required by Sandia. **(b) Removal Requirements.** Those hazardous materials brought onto Sandia controlled premises by the Contractor which are job related consumables and have not been removed from their original packaging and which have not been purchased by Sandia, shall remain the property of the Contractor and shall be removed from Sandia after completion of the work. Hazardous materials in the original, labeled container are not hazardous waste if the material is usable and the full or partially full container is intact and properly closed. Those scrap items which are not hazardous and which have not become hazardous through comingling with hazardous items are owned by the Contractor and shall also be removed.

CI32 PROTECTION OF GOVERNMENT PROPERTY All Sandia National Laboratories information, information technologies and information systems are United States government property. Please read the notice at: <http://www.sandia.gov/supplier/docindex.htm>. All facilities, personal property, existing vegetation, structures, equipment, utilities, improvements, materials and work at Sandia National Laboratories are United States government property. Acts of theft, improper use and/or unlawful destruction of United States government property are punishable under one or more Federal Criminal Laws.

CI33 REQUIREMENTS FOR ACCESS (a) Government Sites. Permission to enter government sites shall at all times be subject to all laws, regulations, and site access

rules for the site (including but not limited to all ES&H and Security requirements). The government requirements include but are not limited to, all of the requirements set forth in this section for any work to be performed on a government site. To obtain access to such premises, the Contractor shall write a letter to the SDR or the SCR stating the company designation to be used by the Contractor and each subcontractor and furnishing the following information on each individual requiring access to such premises: name, date of birth, and citizenship status, completed ES&H training requirements set forth in the SOW. Access will be granted for the period of performance of the work only. Contractor shall withdraw and replace any individual, including any subcontractor employee, assigned to perform work under this contract, who in the judgment of Sandia or DOE/NNSA, is to be denied access to any government site. Contractor shall submit to the SDR or the SCR proposed working schedules for its personnel and the personnel of each of its subcontractors. The schedules will show proposed daily working hours and proposed work weeks. Schedules that deviate from Sandia's normal work day or work week must be approved by the responsible SDR. In the absence of a written authorization from the SCR or DOE/NNSA, use of government sites by the Contractor and its subcontractors of any tier, pursuant to access granted under this clause, shall be limited to work required by this contract to be performed on such premises. THE USE OF THE ACCESS PRIVILEGE FOR ANY PURPOSE OTHER THAN TO PERFORM WORK UNDER THIS CONTRACT IS PROHIBITED AND MAY BE GROUNDS FOR TERMINATING THIS CONTRACT DEFAULT OR FOR FINDING THAT AN INDIVIDUAL IS UNACCEPTABLE FOR FUTURE ACCESS.

(b) Sandia Sites. The organizations listed below are responsible for coordinating and administering the provisions of visitor access and control for the sites as listed. Sandia National Laboratories, Albuquerque, New Mexico – Badge Office, Sandia Corporation, Building IPOC. Sandia National Laboratories, Livermore, California Visitor Control and Administration Section, Sandia Corporation, Building 911. Tonopah Test Range, Tonopah, Nevada Office of the Tonopah Test Range Manager.

CI34 TERMINATION OR REASSIGNMENT OF PERSONNEL The Contractor shall:

(i) notify immediately the SCR and the Badge Office at Albuquerque (Sandia Physical Security Division at Livermore; Tonopah Test Range Manager at Tonopah) if any Contractor employees assigned to work under this contract are terminated for any reason or are assigned to other Contractor nonSandia work and will not work under this contract in the future, and **(ii)** ensure that any Contractor employees identified under this paragraph surrender to the Sandia Badge Office (Sandia Physical Security Division at Livermore; Tonopah Test Range Manager at Tonopah) any Sandia badge, Kirtland Air Force Base decals or other access documents within five days of termination or reassignment.

CI35 VEHICLE INSURANCE All vehicles, owned or operated by the Contractor, subcontractors or their agents and employees, having access to government sites shall be covered by at least \$200,000/\$500,000 public liability and \$20,000 property damage insurance.

CI36 VEHICLE MARKINGS All vehicles used by either the Contractor or its subcontractors shall be marked clearly to indicate company name of user. Vehicles which do not bear permanent markings may be temporarily marked as follows: **(1)** Signs, no longer than the vehicle door is wide, with a white or lighter background, showing the Contractor's name in one inch high, or larger, dark colored letters, may be made from sheet metal, cardboard or other suitable material and temporarily attached to the vehicle's front door panels so that the signs appear in the approximate center of each door panel. Words such as "Company," "Corporation" or "Division" may be abbreviated. **(2)** No signs shall be attached to the vehicle's glass area for safety reasons.